

Nos. 21957, 22404

IN THE

# United States Court of Appeals FOR THE NINTH CIRCUIT

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BEVERLY HILLS FEDERAL SAVINGS & LOAN AS-  
SOCIATION,

*Appellant,*

*vs.*

EUGENE WEBB, JR., MARGUERITE R. WEBB, RICH-  
ARDS MATTHEWS, JR., ROBERT G. RUFİ and  
EUGENE C. JONES,

*Appellees.*

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BEVERLY HILLS FEDERAL SAVINGS & LOAN AS-  
SOCIATION,

*Appellant,*

*vs.*

TITLE INSURANCE & TRUST COMPANY,

*Appellee.*

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Brief of Appellees Eugene Webb, Jr., Marguerite  
R. Webb, Richards Matthews, Jr., Robert G.  
Rufi and Eugene C. Jones.

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## Issue Presented for Review.

1. Was the Judgment of the District Court dismissing for lack of jurisdiction, the action upon the Second Amended and Supplemental Complaint against the appellees, correct?

## Statement of the Case.

Appellant's Opening Brief recites as facts much that is not a proper part of the record on this appeal and

much that has no bearing upon the issue which is presented for review.<sup>1</sup>

Rather than comment upon the improper and the irrelevant, we shall state the pleadings, the documents and the evidence upon which Judge Whelan properly concluded that jurisdiction is lacking.

This case began in 1962 by the filing of a Complaint by the Beverly Hills Federal Savings and Loan Association against the Federal Home Loan Bank Board. The Association asserted that the Board had incorrectly charged the Association with improper acts and practices; the Association asked that the District Court, pursuant to 12 U.S.C.A. 1464(d)(1), declare that the Association, its officers and directors had not acted wrongfully.

The Complaint was superseded by a First Amended Complaint, also filed in 1962, and later, in 1965, by a Second Amended and Supplemental Complaint. It, together with its Exhibits, is reproduced as Appendix "A" to this Brief, and we will refer to it by reference to that Appendix. Because the Second Amended and Supplemental Complaint completely supersedes the earlier charges, we shall refer only to it.

Judge Whelan, in the District Court, held that the Second Amended and Supplemental Complaint did not

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<sup>1</sup>Between pages 6 and 17 Appellant's Opening Brief is a lengthy discussion of matters contained in the depositions of Eugene Webb, Norman Kull, Bart Lytton and Thomas Clarke. There was never introduced at the hearing, and there is therefore no basis in this Court to recite the deposition testimony which comprises the large majority of Appellant's Opening Brief.

The issue before Judge Whelan in the trial court was framed by the pleadings before him and upon evidence produced during the course of the hearing.



substantially assert jurisdiction against the appellees, and he dismissed it as against them.<sup>2</sup>

The Second Amended and Supplemental Complaint was filed May 10, 1965 [C.T. 750, Appendix "A"]. It alleged jurisdiction under §§1464 and 1464(d)(1) of 12 U.S.C.A. The gist of it and the claim of the plaintiff it asserts is not a grievance against the Bank Board. Paragraph 4 (Appdx A-2) alleges that the Bank Board is an independent agency of the executive branch of the United States Government; and that it is subject to suit in the Federal District Court. Paragraphs 6 and 7 (Appdx A-2) make the allegation that during the time prior to March 14, 1961, defendants Eugene Webb, Jr. and Marguerite R. Webb had the control of the Association; that they together with appellees Matthews, Rufi and Jones were the directors of the Association.

Paragraphs 8 and 9 (Appdx A-2-3) allege that at sometime prior to March 14, 1961, Southland Company was formed; that it engaged in mortgage, insurance, and escrow business for which the Association was the major source of business; that the stock ownership of Southland Company was in a trust for the

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<sup>2</sup>Although this Court has had the case before it on two previous occasions, neither involved the issue, the pleadings nor the facts which are fundamental to this appeal. In *Reich v. Webb* (9th Cir. 1964) 336 F. 2d 153, this Court affirmed the denial of a savings account depositor of the Association to intervene. The issues related to adequacy or representation under Rule 24 of FRCP. In *Webb v. Beverly Hills Federal Savings and Loan Association* (9th Cir. 1966) 364 F. 2d 146, this Court affirmed the refusal to dismiss the Webb Group because the other alleged wrongdoers had been voluntarily dismissed by the Association and by the Bank Board. Both of these appeals predate the filing of the Second Amended and Supplemental Complaint which is the foundation of the Judgment of Dismissal which Appellant seeks to reverse.

benefit of the children of Mr. and Mrs. Webb, and of which they and Title Insurance and Trust Company (appellee in consolidated appeal 22404) were the trustees.

About March 14, 1961, according to paragraph 10, Mr. and Mrs. Webb sold the "control" of the Association to Lytton Financial Corporation for \$1,800,000. It alleges that the sale involved the transfer of the Southland Company stock to Lytton Financial for a stated price of \$1,500,000 and the execution of an employment agreement by which Lytton Financial was to pay Mr. and Mrs. Webb \$300,000. It is claimed by the Association (Appdx A-4-5) that the sole purpose of the transaction was to transfer control of the Association to Lytton Financial. The sale, according to the allegations, required Mr. and Mrs. Webb to do what was necessary to maintain the business relationship between the Association and Southland Company. Concurrently with the sale, Mr. and Mrs. Webb, Mr. Matthews, Mr. Rufi and Dr. Jones (referred to collectively in pleadings and briefs as the "Webb Group") resigned as directors of the Association, and were replaced by persons selected by Lytton Financial. Paragraph 10 concludes that this transaction was a subterfuge for the sale of the control of the Association.

Paragraph 12 (Appdx A-5) alleges that the transaction was a violation of law, of the Board's rules and regulations, and the Association's By-laws—which ones it does not say.

Paragraphs 15 and 16 (Appdx A-6) state that the Board, in January and March of 1962, adopted resolutions that the transaction violated its rules and advised the Association and the Webb Group that it, the

Board, would conduct a hearing and take action to correct the claimed improprieties. The Association, according to paragraph 17 (Appdx A-7) brought the action in the District Court to obtain declaratory relief that the transaction was valid and proper.<sup>3</sup>

The allegations then state that in early 1965 the Association and the Board attempted to correct the claimed violations and entered into a written agreement by which the Association purchased, for \$1,500,000 from Lytton Financial its stock in the Southland Company, and the Lytton group of directors resigned in favor of a "public interest" board of directors. The action was then dismissed against Lytton Financial and the entire Lytton group, in accordance with the terms of the agreement that had been made.<sup>4</sup>

Paragraph 22 (Appdx A-8) alleges the nature of the controversy which plaintiff contends exists and concerning which it seeks declaratory relief and compensatory damages from the Webb Group of \$1,800,000. Paragraph 22 reads as follows:

"A bona fide controversy exists between the plaintiff ASSOCIATION and defendants with respect to the remainder of the violations and charges specified in Exhibits 'A' and 'B'. Plaintiff contends that the sale of control of plaintiff ASSOCIATION is in violation of the law and the Rules and Regulations of the BOARD and the By-Laws of plaintiff ASSOCIATION, and that de-

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<sup>3</sup>To this point the allegations show that in 1962 a true dispute between the Association and the Board existed. The jurisdiction to file the original Complaint under 12 U.S.C.A. 1264 (d)(1) was clear because a true controversy existed.

<sup>4</sup>Clear on the face of the pleadings is that the controversy between the Association and the Board has dissolved; a settlement has been made. Jurisdiction, say we, and said Judge Whelan has gone.

fendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFİ and EUGENE C. JONES are jointly and severally liable to plaintiff ASSOCIATION for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) held in trust for plaintiff ASSOCIATION. Plaintiff ASSOCIATION is informed, believes and alleges that the BOARD concurs in this contention of plaintiff ASSOCIATION, but makes additional and further contentions with respect to the violations alleged in Exhibit 'A' and 'B'. Defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFİ and EUGENE C. JONES contend that the sale was valid and lawful, that they did not violate the law or the Rules and Regulations of the BOARD or the By-Laws of plaintiff ASSOCIATION, and that they are not liable for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), or any other amount."

The Second Amended and Supplemental Complaint prays judgment for declaratory relief that the sale was in violation of the rules and regulations of the Board and of the By-laws of the Association and asks the Court to determine that the sum of \$1,800,000 is held in trust for the Association. It also asks judgment in the amount of \$1,800,000 against each of the individuals in the Webb Group.

No relief is sought against the Federal Home Loan Bank Board and no dispute with the Federal Home Loan Bank Board is in any manner alleged in the Second Amended and Supplemental Complaint.

The Answer by the Bank Board (Appdx B-43) is equally illuminating on the question of whether or not a dispute between the Association and the Bank Board exists. It was filed November 23, 1966. It admits all the charging allegations in the Second Amended and Supplemental Complaint. When, however, the allegations of paragraph 22 are met, the Answer of the Bank Board states: (Appdx B-52)

“22 The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 22 of the complaint but more affirmatively avers that there are other extant controversies which are evident from a comparison of the Second Amended and Supplemental Complaint of the plaintiff, Association with the currently outstanding Cross-Claims of the Defendant, Federal Home Loan Bank Board as to the Defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, as well as this pleading of the Defendant, Federal Home Loan Bank Board, a regulatory agency charged with the supervision of federally-chartered Savings and Loan Associations, which is asserting broader and more extensive claims than the plaintiff, Association whose claims from an examination of the Second Amended and Supplemental Complaint are of a more narrow scope by virtue of its status as a thrift institution rather than a regulatory agency, with the exception that the Defendant, Federal Home Loan Bank Board has not asserted claims for punitive or compensatory damage against the defendants, Richards Matthews, Jr., Robert G. Rufi or Eugene C. Jones.”

The prayer in the Answer also makes it abundantly clear that the relief sought by the Bank Board is parallel to that sought by the Association. The Bank Board goes farther than the Association to the extent of asking that the Webb Group never again be given any position of responsibility or trust or management of the Association, and that the Court enter a judgment for punitive damages against Mr. and Mrs. Webb for violation of their fiduciary duties but in an amount not specified even in the prayer of the Complaint.<sup>5</sup>

The Webb Group in late 1955 filed a Motion to Dismiss the Second Amended and Supplemental Complaint for lack of federal jurisdiction. After extensive briefing argument, Judge Whelan ordered a hearing and trial on the jurisdictional issue. Evidence and testimony was produced upon which he concluded that no controversy existed between the Association and the Board. Judge Whelan filed a Memorandum Decision and Opinion, printed as Appendix "C" to this brief, in which he said (Appdx C-57):

"The evidence here establishes that there is not any real controversy between plaintiff and the FEDERAL HOME LOAN BANK BOARD to give this Court Federal jurisdiction of plaintiff's action. While the plaintiff and the BOARD refer to some controversy, it is clear that such controversy is fanciful at the best."

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<sup>5</sup>These latter two minor differences between the position of the Bank Board and the position of the Association are the differences which Judge Whelan characterized in his Memorandum Opinion as being "fanciful at the best" (Appdx C-57).



Judge Whelan's Memorandum Decision and Opinion rejects all plaintiff's claims of subject matter jurisdiction. It considers the claims of federal question jurisdiction, pendent jurisdiction, ancillary jurisdiction and the doctrine of relation back. All are found wanting. As Appendix "C" demonstrates, all plaintiff's claims were given thorough consideration and scholarly attention. The Decision and the Judgment of Dismissal which followed were the result of mature and careful thought.

### Summary of Argument.

The Memorandum Decision and Opinion by Judge Whelan contains a thorough review of the pertinent pleadings, the evidence on the jurisdictional question and the basis upon which he concluded there was no subject matter jurisdiction of the Second Amended and Supplemental Complaint against the Webb Group.

The Memorandum Opinion found no diversity of citizenship and no jurisdiction based upon the existence of a federal question. The Association in its Opening Brief does not now assert federal jurisdiction on either of these two bases.

What the Association now contends is that jurisdiction exists by reason of ancillary jurisdiction. It argues that because there is a dispute between the Association and the Bank Board, there is, therefore, jurisdiction for the Association to join a claim it has against the Webb Group. This argument before Judge Whelan was without success. He held a trial on the very is-

sue of whether or not a dispute existed between the Association and the Bank Board. Upon the conclusion of that trial, he found the contention of a controversy to be groundless. (Appdx C-57)

The determination by Judge Whelan that no controversy existed between the Association and the Bank Board upon the Second Amended and Supplemental Complaint was based upon his analysis of the Second Amended and Supplemental Complaint and the position taken by the Bank Board. He concluded that the Association and the Bank Board were, in effect, taking a completely parallel, if not identical, position. Only in two narrow areas was there even a suggestion of difference between them. (Appdx C-57-58). One was that the Bank Board was contending that the Association should never again employ any members of the Webb Group, when, of course, the evidence showed at the hearing that neither the new management of the Association nor any one connected with the Webb Group had any intention whatsoever in the foreseeable future that the Webb Group would ever be asked to be employed by the Association in any capacity. Judge Whelan found that there was no substantial controversy between the Association and the Bank Board on this score.

The second area where it was contended that a difference of opinion between the Bank Board and the Association existed was in reference to punitive damages. The Second Amended and Supplemental Complaint did not seek punitive damages from the Webb Group; the



Bank Board's answer said the Webb Group should be liable for punitive damages. Judge Whelan found, on the evidence produced at the hearing, that this was not the kind of controversy which justified the exercise of federal jurisdiction. Upon these contentions, this evidence and a full and complete hearing, Judge Whelan concluded there was no real controversy between the Bank Board and the Association which would invoke federal jurisdiction.

Appellant's Opening Brief does not question the finding that there is no real controversy between the Association and the Bank Board. The Association does not question the sufficiency of the evidence, nor does it assert that there is, in reality, a controversy between it and the Bank Board.

## ARGUMENT.

### I.

#### **The Second Amended and Supplemental Complaint Asserts No Claim Arising Under the Constitu- tion or Laws of the United States.**

The Second Amended and Supplemental Complaint does not allege as a basis of jurisdiction the existence of a federal question under 28 U.S.C.A. Section 1331. The crux of the Association's claim against the Webb Group is a violation of common law and California duties and responsibilities of officers and directors. Although federal question jurisdiction was asserted by the Association in the District Court, it was expressly rejected by Judge Whelan and is not urged by the Association in its Opening Brief.

### II.

#### **The Doctrine of Pendent Jurisdiction Is Not Applicable.**

The doctrine of pendent jurisdiction set forth in the leading case of *Hurn v. Oursler*, 289 U.S. 238, 58 S.Ct. 586, 77 L.Ed. 1148 (1933), is not applicable to the Second Amended and Supplemental Complaint and was found by Judge Whelan in his Memorandum Opinion not to be applicable (Appdx C-57) The two prerequisites to the court obtaining jurisdiction over a claim not otherwise subject to the court's jurisdiction, but where joined with one over which the court has jurisdiction, are that it must be joined with a federal claim of substance and that the federal claim with which it is joined must be such as to constitute the two of them as, in effect, a single cause of action.

The short answer to any claim of pendent jurisdiction here is that the Association does not assert any federal claim to which a common law claim may append itself. The Second Amended and Supplemental Complaint asserts a single claim against the Webb Group, and that is a claim founded upon common law and California statutory obligations.

### III.

#### The Doctrine of Ancillary Jurisdiction Does Not Apply.

At the outset of the case in 1962 the Association claimed that a dispute existed between it and the Bank Board and that this dispute was one over which the District Court had subject matter jurisdiction pursuant to 12 U.S.C.A. 1464(d)(1). It was correct. 12 U.S.C.A. 1464(d)(1) clearly provides for subject matter jurisdiction where the Board has asserted violations of law and regulation and the Association disputes the board's claim.<sup>6</sup>

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<sup>6</sup>Section 1464(d)(1), before its amendment in 1966, read as follows:

"The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, and in the administration of conservatorships and receiverships as provided in paragraph (2) of this subsection, the Board is authorized to act in its own name and through its own attorneys. The Board shall have power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States or its territories or possessions or the Commonwealth of Puerto Rico. It shall by formal resolution state any alleged violation of law or regulation and give written notice to the association concerned of the facts alleged to be such violation, except that the appointment of a Supervisory Representative in Charge, a conservator or a receiver shall be exclusively as provided in paragraph (2) of this

(This footnote is continued on the next page)

Throughout this statute, constant reference is made to the Bank Board and associations as adversaries. The

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subsection. Such association shall have thirty days within which to correct the alleged violation of law or regulation and to perform any legal duty. If the association concerned does not comply with the law or regulation within such period, then the Board shall give such association twenty days' written notice of the charges against it and of a time and place at which the Board will conduct a hearing as to such alleged violation of duty. Such hearing shall be in the Federal judicial district of the association unless it consents to another place and shall be conducted by a hearing examiner as is provided by the Administrative Procedure Act. The Board or any member thereof or its designated representative shall have power to administer oaths and affirmations and shall have power to issue subpoenas and subpoenas duces tecum, and shall issue such at the request of any interested party, and the Board or any interested party may apply to the United States district court of the district where such hearing is designated for the enforcement of such subpoena or subpoena duces tecum and such courts shall have power to order and require compliance therewith. A record shall be made of such hearing and any interested party shall be entitled to a copy of such record to be furnished by the Board at its reasonable cost. After such hearing and adjudication by the Board, appeals shall lie as is provided by the Administrative Procedure Act, and the review by the court shall be upon the weight of the evidence. Upon the giving of notice of alleged violation of law or regulation as herein provided, either the Board or the association affected may, within thirty days after the service of said notice, apply to the United States district court for the district where the association is located for a declaratory judgment and an injunction or other relief with respect to such controversy, and said court shall have jurisdiction to adjudicate the same as in other cases and to enforce its orders. The Board may apply to the United States district court of the district where the association affected has its home office for the enforcement of any order of the Board and such court shall have power to enforce any such order which has become final. The Board shall be subject to suit by any Federal savings and loan association with respect to any matter under this section or regulations made thereunder, or any other law or regulation, in the United States district court for the district where the home office of such association is located, and may be served by serving a copy of process on any of its agents and mailing a copy of such process by registered mail, to the Federal Home Loan Bank Board, Washington, District of Columbia."

entire section makes its purpose quite clear—the settlement of disputes between the Bank Board and the associations only. This intention is confirmed by the Historical Note to 12 U.S.C.A. 1464, which reads:

“Subsec. (d) amended generally by Act Aug 2, 1954, § 503(2), to provide a means by administrative and court proceedings whereby the Board may enforce compliance with law and regulations by Federal savings and loan associations . . .”

Nothing is said about suits by or against individuals. No case has been cited by the Association and none can be found in which individuals had sued, or been sued by, the Bank Board under Section 1464(d)(1).

The statutory remedy the Bank Board has for wrongful activities by association officers is in 12 U.S.C.A. 1464(d)(2). This section establishes grounds for appointing a conservator and after hearing.<sup>7</sup>

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<sup>7</sup>It reads:

“The grounds for the appointment of a conservator or receiver for a Federal savings and loan association shall be one or more of the following: (i) insolvency in that the assets of such association are less than its obligations to its creditors and others, including its members; (ii) violation of law or of a regulation; (iii) the concealment of its books, records, or assets or the refusal to submit its books, papers, records, or affairs for inspection to any examiner or lawful agent appointed by the Federal Home Loan Bank Board; and (iv) unsafe or unsound operation. The Board shall have exclusive jurisdiction to appoint a Supervisory Representative in Charge, conservator, or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists and the Board determines that an emergency exists requiring immediate action, the Board is authorized to appoint ex parte and without notice a Supervisory Representative in Charge to take charge of said association and its affairs who shall have and exercise all the powers herein provided for conservators and receivers. Unless sooner removed by the Board, such Supervisory

(This footnote is continued on the next page)

If there existed a valid substantial dispute between the Association and the Bank Board, there might be some validity in an assertion that either the Association or the Bank Board could join other parties necessary for a complete determination of the dispute or a

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Representative in Charge shall hold office until a conservator or receiver, appointed by the Board after notice as herein provided, takes charge of the association and its affairs, or for six months, or until thirty days after the termination of the administrative hearing and final proceedings herein provided, or until sixty days after the final termination of any litigation affecting such temporary appointment, whichever is longest. The Board shall have the power to appoint a conservator or receiver but no such appointment of a conservator or receiver shall be made except pursuant to a formal resolution of the Board stating the grounds therefor and except notice thereof is given to said association stating the grounds therefor and until an opportunity for an administrative hearing thereon is afforded to said association. Such hearing shall be held in accordance with the provisions of the Administrative Procedure Act and shall be subject to review as therein provided and the review by the court shall be upon the weight of the evidence. A conservator shall have all the powers of the members, the directors, and officers of the Federal association and shall be authorized to operate it in its own name or conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for any Federal savings and loan association, which shall have power as receiver to buy at its own sale subject to approval by the Board. With the consent of the association expressed by a resolution of the board of directors or of its members, the Board is authorized to appoint a conservator or receiver for a Federal association without notice and without hearing. The Board shall have power to make rules and regulations for the reorganization, merger, and liquidation of Federal associations and for such associations in conservatorship and receivership and for the conduct of conservatorships and receiverships. Whenever a Supervisory Representative in Charge, conservator, or receiver, appointed by the Board pursuant to the provisions of this section, demands possession of the property, business and assets of any association, the refusal of any officer, agent, employee, or director of such association to comply with the demand shall be punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or both by such fine and imprisonment."



complete and effective granting of relief. But, as the pleadings before Judge Whelan at the hearing showed, there was no real dispute between the Association and the Bank Board. The dispute which once existed and had been specified in the original complaint had vanished by the time of the Second Amended and Supplemental Complaint because of the settlement which had been reached between the Association and the Bank Board in early 1965. Judge Whelan specifically found that there was no real controversy. Absent such a controversy, it necessarily follows that there was no federal jurisdiction asserted in the Second Amended and Supplemental Complaint to which a claim against the Webb Group by the Association could be an ancillary claim.

Appellant argues (Brief, page 22) that once the Association and the Board have a difference on any matter, the Association, *ipso facto*, has jurisdiction to bring suit in the District Court against any party it claims to be involved in the dispute. That is certainly not what 1464 (d)(1) says; it is not reasonably inferred from the language in 1464 (d)(1). Quite to the contrary, 1464(d)(1) speaks only of disputes between the Association and the Bank Board. It provides in effect a "safety valve" for the Association. Rather than meet the Board's charges in a Board hearing, the Association can assert jurisdiction of an impartial tribunal to determine the validity of the Board's dispute with the Association.

IV.

**The Bank Board's Cross-Claim Against the Webb Group Does Not Create Ancillary Jurisdiction for the Second Amended and Supplemental Complaint.**

Having failed to establish federal jurisdiction by alleging a real dispute in its pleading, the Association now attempts to accomplish the same purpose by a reverse approach of using the Bank Board's Cross-claim against the Webb Group.

The Association makes the oblique argument (Opening Brief, pp. 26-27) that the Bank Board, as an agency of the United States, is expressly authorized to sue by an Act of Congress, 28 U.S.C.A. 1345, and that because of this fact the Association has ancillary jurisdiction to file a complaint against the Webb Group. The Second Amended and Supplemental Complaint does not predicate jurisdiction upon 28 U.S.C.A. 1345, and does not, therefore merit the requirement that the claimed basis for jurisdiction, as a matter of pleading, must appear on the complaint.

*McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 56 S. Ct. 780, 80 L. Ed. 1135 (1936);

*Pure Oil Co. v. Puritan Oil Co.* (2nd Cir. 1942) 127 F.2d 6;

*Barnhart v. Western Maryland Ry. Co.* (4th Cir. 1942) 128 F.2d 709.

Whether the District Court has jurisdiction of the Bank Board's cross-claim against the Webb Group is not an issue in this appeal.<sup>8</sup>

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<sup>8</sup>The cross-claim by the Bank Board against the Webb Group has been held by Judge Whelan to be jurisdictionally effective



The Court on this appeal is not required to determine whether the cross-claim by the Bank Board against the Webb Group asserts a matter over which the District Court has subject matter jurisdiction. This appeal should be denied regardless of whether or not the cross-claim stands on its own jurisdiction. Nevertheless, it is appropriate to call this Court's attention to the fact that the entire framework of 12 U.S.C.A. 1464 as it read in May, 1965, when the Second Amended and Supplemental Complaint was filed, is one which limits the Bank Board's activities for alleged violations of rules and regulations or of law to two remedies. One is the notice of violation procedure which the Bank Board followed in this case with an ultimate determination either in a hearing before the Bank Board or in the District Court. The other remedy available to the Bank Board was that provided in 12 U.S.C.A. 1464-(d)(2), establishing the grounds of the procedures for the appointment of a conservator or a receiver for the Association. No specific authority is given to the Bank Board to sue third parties, and no such authority can be reasonably inferred from any section of 12 U.S.C.A. 1464.

It is relevant in this connection that this Court consider the amendment to 12 U.S.C.A. 1464 enacted in 1966 as Public Law 89-695, Financial Institutions Supervisory Act of 1966. A third remedy was given to the Bank Board by this amendment, namely, the right of the Bank Board, under circumstances where direc-

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and the motion by the Webb Group to dismiss it has been denied. Indeed, this Court may take judicial notice of its own files which show that an Application for Permission to Appeal from that ruling by Judge Whelan was denied on March 21, 1968. (File No. M-3777)

tors or officers of an association engage in practices resulting in substantial loss or damage to the association and evidencing a personal dishonesty and unfitness, on the part of the individual, after hearing, to remove or suspend such officer and director from acting for the association. Even this enlargement of the specified rights of the Bank Board does not include any right to take action against the officer or director by way of a civil suit against him. Senate Report No. 1482, 1966 U.S. Code Congressional and Administrative News 3532 shows that the Congress was concerned with the need to provide a procedure which would secure a prompt correction of irregular practices and unsafe operations of Associations. Certainly, if Congress had wished to provide for a direct cause of action by the Board against directors and against former directors, it would have done so in this amendment to Section 1464.

The Association's argument that its pleading as a plaintiff can borrow jurisdiction from a defendants' cross-claim against another defendant is not supported by any authority. The Association cites no authority for this bold proposition. There is, however, authority to the contrary; that the main action may not borrow jurisdiction from the cross-claim. When a contention similar to the Association's contention was raised in *Ferreira v. Sawayama-Kisen KK*, D.C. S.D.N.Y. 1959, 171 F. Supp. 96, Judge Dimock answered it thusly (171 F. Supp. 96 at 98):

"Here, however, it is the third party claim which has the requisite diversity of citizenship. There is no jurisdiction to entertain the plaintiff's action on the civil side. It is the handmaiden only who has the right to entry. The mistress who seeks en-

try cannot say that she is needed for the service of the handmaiden.

“The third party claim cannot confer upon the court jurisdiction over the claim asserted by the plaintiff.”

Other cases similarly holding that the jurisdictional basis asserted in a cross-claim cannot give subject matter jurisdiction to an otherwise deficient complaint are:

*Burlingham, Underwood, Barron, Etc. v. Luckenbach S.S. Co.*, in D.C. S.D.N.Y., 1962, 208 F. Supp. 544;

*Massella v. Pan Oceanica A/S Panama*, D.C. S.C.N.Y. 1964, 232 F. Supp. 29.

See also:

6 Cyc. Fed. Proc. (3rd Ed.) Section 17.71.

That the Bank Board may have jurisdiction under 28 U.S.C.A. 1345 when it filed its cross-complaint does not create jurisdiction of the Court over the complaint of the Association under 28 U.S.C.A. 1345. *Acron Investments, Inc. v. Federal Savings & Loan Insurance Corp.* (9th Cir. 1966) 263 F.2d 236, cited by the Association (Brief, p. 26), neither stands for that proposition nor supports that proposition by inference. *Acron Investments* was an action in which the Federal Savings & Loan Insurance Corporation brought suit to foreclose upon deeds of trust. That corporation was an agency of the United States authorized by Act of Congress to bring suit. The fact that it was bringing suit upon an assigned deed of trust does not support any assertion that the assignor could have brought suit; yet, that appears to be the argument which the Association makes.

Finally, appellant's claim that 28 U.S.C.A. 1345 should be given a broad construction so that it reads, in effect, that the court has jurisdiction over any pleading where the United States or its agencies are involved finds no support in any case and is certainly contrary to the language itself of 28 U.S.C.A. 1345. This argument by appellant at page 28 of its brief has no merit.

### Conclusion.

The Association's claim of subject matter jurisdiction against the Webb Group is based in part upon the contention that 12 U.S.C.A. 1464(d)(1) confers federal jurisdiction. As we have shown in this Brief, such jurisdiction is completely dependent upon the existence of a genuine controversy between the Association and the Bank Board. No such controversy existed at the time of the filing of the Second Amended and Supplemental Complaint. No such controversy was alleged in that pleading. It follows, therefore, that jurisdiction does not exist under that statute.

The Association also contends that the District Court has jurisdiction of the Bank Board's cross-claim against the Webb Group and that, therefore, ancillary jurisdiction exists as to the Association's Second Amended and Supplemental Complaint. No authority is cited for this proposition and it puts the cart before the horse. The Bank Board may or may not have jurisdiction to bring an action against former directors of a savings and loan association; but whether it does or does not have that jurisdictional power, it cannot give jurisdiction to a Complaint which otherwise has no jurisdictional foundation and to which the cross-claim becomes in effect, a responsive pleading.

For the reasons set forth in this Brief, the Judgment of Dismissal of the Second and Supplemental Complaint against the Webb Group should be affirmed.

Respectfully submitted,

POLLOCK AND PALMER,  
JOHN P. POLLOCK,

*Attorneys for Appellees, Eugene Webb,  
Jr., Marguerite R. Webb, Richards  
Matthews, Jr., Robert G. Rufi and  
Eugene C. Jones.*









## APPENDIX "A."

### Second Amended and Supplemental Complaint for Declaratory Judgment, to Impress a Trust, and Other Relief.

United States District Court, for the Southern  
District of California, Central Division.

Beverly Hills Federal Savings and Loan Association,  
Plaintiff, v. Federal Home Loan Bank Board, Eugene  
Webb, Jr., Marguerite R. Webb, Richards Matthews,  
Jr., Robert G. Rufi, Eugene C. Jones, and Title Insur-  
ance and Trust Company, Defendants. Civil Action No.  
62-305-FW

Lodged: March 15, 1965.

Filed: May 10, 1965.

1. This action arises under the Home Owners' Loan Act of 1933, as amended (12 U.S.C. §1464 and §1464[d][1]) and the Federal Declaratory Judgments Act (28 U.S.C. §2201 and §2202).

2. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand Dollars (\$10,000).

3. Plaintiff is a federal savings and loan association organized and existing under the Home Owners' Loan Act, as amended, with its home office in Beverly Hills, California.

4. Defendant FEDERAL HOME LOAN BANK BOARD, referred to as the BOARD, is an independent agency of the executive branch of the United

States Government. The BOARD is subject to suit in the Federal District Court in which the plaintiff ASSOCIATION has its main office, under Section 5(d)(1) of the Home Owners' Loan Act, as amended.

5. Defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES, and each of them, are residents of the Southern District of California. Defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB are sued individually and as trustees.

6. For a long time prior to and on March 14, 1961, defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB were in control of plaintiff ASSOCIATION by virtue of proxy agreements executed by members of plaintiff ASSOCIATION designating the following persons, in the order named, to act for them: EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., EUGENE WEBB, III, and ROBERT G. RUFI, each having as to himself or herself full power of substitution.

7. For a long time prior to and on March 14, 1961, defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES constituted the Board of Directors of plaintiff ASSOCIATION. Defendant EUGENE WEBB, JR., was the president of plaintiff ASSOCIATION. Defendant MARGUERITE R. WEBB was the Chairman of the Board and first vice president of plaintiff ASSOCIATION.

8. For a long time prior to and on March 14, 1961, the Southland Company was a corporation organized

under the laws of California and engaged in the mortgage, insurance, escrow and related business. Its office was and is located in the same building as plaintiff's home office. Plaintiff ASSOCIATION was the major source of business for the Southland Company and referred mortgage, insurance, escrow and other business to the Southland Company from which the Southland Company made a profit. The Southland Company would have earned only nominal profits and the stock of the Southland Company would have had only nominal value if plaintiff ASSOCIATION had not referred business to the Southland Company.

9. Plaintiff is informed, believes and alleges that for a long time prior to and on March 14, 1961, defendants EUGENE WEBB, JR., MARGUERITE R. WEBB and TITLE INSURANCE AND TRUST COMPANY, as trustees for the children of EUGENE WEBB, JR., and MARGUERITE R. WEBB, owned the outstanding stock of the Southland Company. Defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB were on control of the trust and the Southland Company. Defendant EUGENE WEBB, JR., was a director and the general manager and president of the Southland Company. Defendant MARGUERITE R. WEBB was a director and vice president of the Southland Company.

10. On or about March 14, 1961, defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB sold control of plaintiff ASSOCIATION to Lytton Financial Corporation and its nominees for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000). The sale was accomplished through the trans-

fer of the stock of the Southland Company to the Lytton Financial Corporation and the execution of an employment agreement between the Lytton Financial Corporation and defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB. The parties to the sale arbitrarily allocated One Million Five Hundred Thousand Dollars (\$1,500,000) to the transfer of stock of the Southland Company and Three Hundred Thousand Dollars (\$300,000) to the employment agreement, although the sole purpose of the transaction and payment of the consideration was to transfer control of plaintiff ASSOCIATION to Lytton Financial Corporation and its nominees. The terms of the sale required defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB to do all things necessary to assure the continuance of the business relationship between plaintiff ASSOCIATION and the Southland Company. Concurrently with the sale of the stock and the execution of the employment agreement, defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFİ and EUGENE C. JONES resigned as directors and officers of plaintiff ASSOCIATION; exercised the power of substitution contained in the proxy agreements by substituting Bart Lytton, Beth Lytton, Samuel J. Sills, Thomas W. Clarke, H. P. Braman and Glenn Wilson, nominees of Lytton Financial Corporation, as the holders of the proxies; and selected nominees of the Lytton Financial Corporation as directors and officers of plaintiff ASSOCIATION. The sale of the stock of the Southland Company, together with the employment agreement, was used by defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB

as an instrumentality device and subterfuge to sell control of plaintiff ASSOCIATION.

11. The control of plaintiff ASSOCIATION, including the proxy agreements executed by its members and directorships, was and is an asset of plaintiff ASSOCIATION and its members.

12. In entering into the sale transaction and the transfer of control of plaintiff ASSOCIATION, defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB violated the law, the Rules and Regulations of the BOARD and the By-Laws of plaintiff ASSOCIATION and breached their fiduciary duties of loyalty, good faith and fidelity to plaintiff ASSOCIATION and its members. Defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB hold the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), received from the sale, in trust for plaintiff ASSOCIATION and its members.

13. Defendants RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES conspired with, aided and assisted defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB in the sale of control of plaintiff ASSOCIATION. In so assisting and cooperating, defendants RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES violated the law, the Rules and Regulations of the BOARD and the By-laws of plaintiff ASSOCIATION and breached their fiduciary duties of loyalty, good faith and fidelity to plaintiff ASSOCIATION and its members. Defendants RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES are jointly and severally

liable, with defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB, for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) received by defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB.

14. From and after the 14th day of March, 1961, until the 14th day of January, 1965, plaintiff was under the control and domination of the Lytton Financial Corporation and Bart Lytton, Beth Lytton, Samuel J Sills, Thomas W. Clarke, H. P. Braman and Glenn Wilson, nominees of Lytton Financial Corporation.

15. On or about January 26, 1962, the BOARD made findings and adopted a resolution that the sale was in violation of the law, the Rules and Regulations of the BOARD and the By-Laws of plaintiff ASSOCIATION, and notified plaintiff ASSOCIATION, its Board of Directors, and defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFİ and EUGENE C. JONES that it had resolved to correct the violations. A copy of the resolution and written charges is attached as Exhibit "A".

16. On or about March 30, 1962, the BOARD further adopted a resolution and notified plaintiff ASSOCIATION, its Board of Directors and defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFİ and EUGENE C. JONES of the violations and that it intended to conduct a hearing and take action to correct the violations. A copy of the resolution and written charges is attached as Exhibit "B".



17. Acting under the control of the directors specified in Paragraph 14, plaintiff ASSOCIATION on February 20, 1962 filed this action in declaratory relief to have the court declare that the sale transaction was valid and to enjoin the BOARD from proceeding with its resolutions and written charges or from correcting the violations.

18. On or about January 14, 1965, plaintiff ASSOCIATION and the BOARD attempted to correct certain of the violations and charges contained in the resolutions of the BOARD. With the approval of the BOARD, plaintiff entered into a written agreement with Lytton Financial Corporation, Bart Lytton, Beth Lytton, Thomas W. Clarke, Samuel J. Sills, H. P. Braman and Glenn Wilson, the noninees of Lytton Financial Corporation resigned from the Board of Directors of plaintiff ASSOCIATION, a new public interest Board of Directors of plaintiff ASSOCIATION was elected, the proxy agreements were transferred to the BOARD, and plaintiff ASSOCIATION acquired the outstanding stock of the Southland Company. Pursuant to the agreement, the court ordered the dismissal of all claims against Lytton Financial Corporation, Bart Lytton, Beth Lytton, Thomas W. Clarke, Samuel J. Sills, H. P. Braman and Glenn Wilson. A copy of the agreement is attached as Exhibit "C".

19. Plaintiff is informed, believes and alleges as follows: defendant TITLE INSURANCE AND TRUST COMPANY is a corporation organized under the laws of the State of California with its home office in Los Angeles, California, and was and is one of the co-trustees of the trust referred to in this complaint. Defendant TITLE INSURANCE AND TRUST COM-

PANY did not execute any of the documents pertaining to the transfer of stock of the Southland Company to Lytton Financial Corporation. Under the terms of the trust, the consent and approval of defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB was sufficient to transfer the stock. Plaintiff does not allege that defendant TITLE INSURANCE AND TRUST COMPANY acted in violation of any law, regulation or by-law and is made a defendant for the sole purpose of facilitating the enforcement of any orders made by the court with respect to the trust or the trust property.

20. Acting under its newly elected public interest Board of Directors, plaintiff ASSOCIATION is attempting to correct other violations arising out of the sale by prosecuting this Amended and Supplemental Complaint to recover the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) paid as consideration for the sale of control of plaintiff ASSOCIATION.

21. Acting under its newly elected public interest Board of Directors, plaintiff ASSOCIATION on January 18, 1965 reinstated the Reich Savings Account with all accrued earnings.

22. A bona fide controversy exists between the plaintiff ASSOCIATION and defendants with respect to the remainder of the violations and charges specified in Exhibits "A" and "B". Plaintiff contends that the sale of control of plaintiff ASSOCIATION is in violation of the law and the Rules and Regulations of the BOARD and by By-Laws of plaintiff ASSOCIATION, and that defendants EUGENE WEBB,



JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES are jointly and severally liable to plaintiff ASSOCIATION for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) held in trust for plaintiff ASSOCIATION. Plaintiff ASSOCIATION is informed, believes and alleges that the BOARD concurs in this contention of plaintiff ASSOCIATION, but makes additional and further contentions with respect to the violations alleged in Exhibits "A" and "B". Defendants EUGENE WEBB, JR., and MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES contend that the sale was valid and lawful, that they did not violate the law or the Rules and Regulations of the BOARD or the By-Laws of plaintiff ASSOCIATION, and that they are not liable for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), or any other amount.

WHEREFORE, plaintiff ASSOCIATION prays for judgment as follows:

- (1) For a declaratory judgment that the sale was in violation of the law and the Rules and Regulations of the BOARD and the By-Laws of plaintiff ASSOCIATION, and that the defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES hold in trust for plaintiff the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000) paid as consideration for the sale, or such other declaration as may be appropriate and proper.

- (2) For judgment against defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUFI and EUGENE C. JONES, jointly and severally, for the sum of One Million Eight Hundred Thousand Dollars (\$1,800,000), or such other sums or sum as plaintiff may be entitled.
- (3) For its costs.
- (4) For such other and further relief as may be just.

BALL, HUNT AND HART

By JOSEPH A. BALL

Attorneys for Plaintiff

**Verification.**

State of California, County of Los Angeles—ss.

LEONARD M. SMITH, being first duly sworn, deposes and says:

I am a vice president of BEVERLY HILLS FEDERAL SAVINGS AND LOAN ASSOCIATION, the above named plaintiff, and am authorized to make this verification for and on behalf of said ASSOCIATION; that I have read the foregoing Second Amended And Supplemental Complaint For Declaratory Judgment, To Impress A Trust, And Other Relief and know the contents thereof; that the same is true of my own knowledge, except as to those matters which are stated on information or belief, and as to those matters I believe it to be true.

LEONARD M. SMITH

Subscribed and sworn to me This 15th day of March, 1965.

/s/ Anne L. Pillsbury

ANNE L. PILLSBURY, Notary Public

State of California—Principal Office

Los Angeles County

My Commission Expires Dec. 6, 1968.

(Seal)

EXHIBIT "A."

FEDERAL HOME LOAN BANK BOARD

No. 15,430

Date: January 26, 1962

WHEREAS, Beverly Hills Federal Savings and Loan Association, Beverly Hills, California, Lytton Savings and Loan Association, Hollywood, California and Home Foundation Savings and Loan Association of Palo Alto, Palo Alto, California are institutions whose accounts are insured under Title IV of the National Housing Act, as amended, 12 U.S.C. §1724 *et seq.*, and

WHEREAS, Beverly Hills Federal Savings and Loan Association, Beverly Hills, California is a Federal Savings & Loan Association, chartered by the Federal Home Loan Bank Board under the provisions of Section 5(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. §1464 (a) and subject to the Rules and Regulations of the Federal Home Loan Bank Board, and

WHEREAS, prior to and since the 9th day of March, 1961, Lytton Savings and Loan Association, Hollywood, California and Home Foundation Savings and Loan Association of Palo Alto, California are and have been owned and controlled by the Lytton Financial Corporation, a corporation organized under the laws of the State of Delaware, with its principal office in Hollywood, California, and

WHEREAS, prior to, and for some time on, the 14th day of March, 1961, the Beverly Hills Federal Savings and Loan Association, Beverly Hills, California, had a five-member Board of Directors, of which Board of

Directors, Eugene Webb, Jr. was President and a Director and Marguerite R. Webb was First Vice-President and Chairman of the Board of Directors, respectively, and Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones were the remaining members of said Board of Directors, and

WHEREAS, on or about the 9th day of March, 1961, Lytton Financial Corporation, acting by and through Thomas W. Clarke, its Senior Vice-President (and Attorney), entered into a "Buy and Sell Agreement" to purchase all of the outstanding capital stock of the Southland Company, a mortgage banking, escrow and insurance company from a trust or trusts controlled by Eugene Webb, Jr. and Marguerite R. Webb (with the third and corporate trustee being the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California), for the benefit of their children, and in which "Buy and Sell Agreement" the consideration payable by the Buyer was \$1,500,000 in cash to the Trust and a Personal Service Agreement described hereinafter of Eugene Webb, Jr. and Marguerite R. Webb with a further consideration to them of \$300,000, payable in annual installments of \$60,000, and

WHEREAS, a pertinent paragraph of the aforesaid "Buy and Sell Agreement" of March 9, 1961 provided that Eugene Webb, Jr. and Marguerite R. Webb would do any and all things necessary and execute any and all necessary documents as Lytton Financial Corporation might require to assure the continuance of the present business relationship between the Southland Company and the Beverly Hills Federal Savings and Loan Association, and

WHEREAS, all warranties made by the "Sellers" in the aforesaid "Buy and Sell Agreement" were the warranties of Eugene Webb, Jr. and Marguerite R. Webb and the corporate trustee neither joined in these warranties nor executed the agreement as co-trustee of this trust for the benefit of the Webb children, and

WHEREAS, as a follow-up agreement to the "Buy and Sell Agreement" of March 9, 1961, a "Personal Service Agreement" was entered into on March 4, 1961 between Lytton Financial Corporation and Eugene Webb, Jr. and Marguerite R. Webb whereby Lytton Financial Corporation, identified in the "Personal Service Agreement" as the "Buyer", agreed to pay the sum of \$300,000 over a 5-year period to Eugene Webb, Jr. and Marguerite R. Webb, irrespective of whether either or both of said parties survive the period of the Agreement and are, in fact, able and do perform the services, and

WHEREAS, on or about the 14th day of March, 1961, a regular meeting of the Board of Directors of the Beverly Hills Federal Savings and Loan Association was held in the morning in the offices of the Association, which meeting was adjourned at 10:00 a.m. and reconvened for a further session at 1:30 p.m. at the offices of the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California, and

WHEREAS, Bart Lytton, President, Chairman of the Board and a Director of Lytton Financial Corporation, Thomas W. Clarke, Vice-President, a Director and Counsel for Lytton Financial Corporation, Maurie Starrels, Secretary, Treasurer and a Director of Lytton Financial Corporation and Samuel J. Sills, a Director of Lytton Savings and Loan Association, were

present at this regular meeting of the Board of Directors of Beverly Hills Federal Savings and Loan Association, and

WHEREAS, Richards Matthews, Jr. was not present at the reconvened meeting of the Board of Directors of Beverly Hills Federal Savings and Loan Association at 1:30 p.m. on March 14, 1961, and

WHEREAS, at said reconvened regular meeting of the Board of Directors the resignations of the five Board members were accepted at successive intervals during the meeting and four of the five resigning members of the Board of Directors proceeded to elect Beth Lytton as Chairman of the Board and a Director, Thomas W. Clarke as President, Managing Officer and Director and Samuel J. Sills as a Director,—two of these resigning directors who participated in the election being Eugene Webb, Jr. and Marguerite R. Webb, interested parties to this entire transaction which would redound to their benefit and to the benefit of a trust or trusts in which their children were the beneficiaries, and

WHEREAS, at said reconvened regular meeting, Glenn Wilson, a Director of Lytton Financial Corporation, was selected Vice-President of the Association, and

WHEREAS, on or about this same date, the 14th day of March, 1961, as part of the consideration to Lytton Financial Corporation for the purchase of the Southland Company, the power of substitution, contained in all proxies of members of Beverly Hills Federal Savings and Loan Association, constituting and appointing Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Eugene Webb, III, and Robert G. Rufi, in the order named, proxy for and in the name, place and stead of the signing member, was, "for good



and valuable consideration," exercised by substituting Bart Lytton, Beth Lytton, Samuel J. Sills and Thomas W. Clarke for the individuals previously named, in the order named, and

WHEREAS, shortly after the change in directorate of Beverly Hills Federal Savings and Loan Association, Beverly Hills Federal purchased approximately 15.2 million dollars worth of loans, at a 3.4% premium, from Lytton Savings and Loan Association and simultaneously sold at par, approximately 15.8 million dollars worth of loans to Lytton Savings and Loan Association, which, it appears, were reversed by action of the Board of Directors of Beverly Hills Federal Savings and Loan Association on June 28, 1961 and by action of the Board of Directors of Lytton Savings and Loan Association on June 21, 1961, and

WHEREAS, after being advised by the Federal Home Loan Bank Board on June 15, 1961 of certain possible violations of law and regulations and serious questions, which were outlined in detail with respect thereto, the then purported Directors of Beverly Hills Federal Savings and Loan Association, Beth Lytton, Dr. Samuel J. Sills and Thomas W. Clarke met, its President, Thomas W. Clarke informing the Board of Directors that he had received this letter, addressed to him as President, from the Federal Home Loan Bank Board, which *in part* criticized the action of Beverly Hills Federal in selling to Lytton Savings certain loans and purchasing others from Lytton Savings in an approximate amount of 15 million dollars for each transaction, and although these loans were considered proper and advantageous to the Association by these Directors, a reversal of the transaction was ordered, but the contents of the remainder



of this letter were neither discussed, considered nor expressly acted upon by these Directors nor was the seriousness of the other parts of this letter noted in the minutes of the meeting of the Directors of the Association nor was the said letter made a part of the minutes of the meeting of the Directors of the Association, and WHEREAS, less than four months after the assumption of purported directorship by Thomas W. Clarke, previously cast solely in the role of an Attorney rather than an administrator for the Lytton interests, by Beth Lytton, wife of Bart Lytton, Chairman of the Board of Lytton Financial Corporation and Dr. Samuel J. Sills, a former Director of Lytton Savings and Loan Association, Thomas W. Clarke returned to his professional role and approximately one month later, Beth Lytton was replaced by her spouse, Bart Lytton, completing the management take-over by Bart Lytton, President and Chairman of the Board of Lytton Financial Corporation, of Beverly Hills Federal Savings and Loan Association, although he had stated earlier that he would take no position or directorship with Beverly Hills Federal Savings and Loan Association, other than holding the first proxy position, because he "would not take advantage of a corporate opportunity that would be adverse to the Lytton Financial Corporation," and

WHEREAS, at the Meeting of Shareholders, held on Wednesday, January 17, 1962 at 8:30 o'clock a.m. at the offices of the Association at 9424 Wilshire Boulevard, Beverly Hills, California, the President of Beverly Hills Federal, Harold P. Braman, prior to the election of directors, read the "President's Report" to the shareholders, which, while detailing the "fine Year" had by the Association and the current and projected

growth of the Association, as well as the statuts of "one of the top leaders of the savings and loan business nationally" who, with his wife, had assumed "operating control" of the Association, failed to mention and discuss the Board's Letter of June 15, 1961, advising the Association of certain violations of law and regulations and serious questions which were outlined in detail with respect thereto, and

WHEREAS, at the aforesaid Meeting of Shareholders, Bart Lytton voted 471,458 votes for each of the nominees for the offices of Directors of the Association, said votes resulting from 18,146 proxies held by Bart Lytton under power of substitution from Eugene Webb, Jr.

WHEREAS, as a result of the foregoing, Beverly Hills Federal Savings and Loan Association and its past and purported present Officers and Directors and Lytton Financial Corporation and its Officers and Directors have violated the rules and regulations of this Board, specifically § 544.5 of the Regulations and Section 4 of the By-Laws of Beverly Hills Federal Savings and Loan Association, and other law respectively as follows:

(a) Eugene Webb, Jr. and Marguerite R. Webb have violated their fiduciary responsibilities to the shareholders of Beverly Hills Federal Savings and Loan Association by making a special and secret profit and consideration in return for their transfer of the proxies of the shareholders to Bart Lytton, Beth Lytton, Samuel J. Sills and Thomas W. Clarke, in which action and other current members of the then Board of Directors joined;

(b) Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C.

Jones have violated their fiduciary responsibilities of loyalty and good faith to the shareholders of Beverly Hills Federal Savings and Loan Association by participating in the furtherance and accomplishment of an agreement by certain directors to elect and maintain designated persons in office as Officers and Directors of said Association, which was against public policy and accordingly void, and all said participating directors acted with the knowledge of said unlawful agreement;

(c) The Board of Directors of Beverly Hills Federal Savings and Loan Association, which attempted to elect new Directors on March 14, 1961, acted illegally and in violation of the Regulations of the Federal Home Loan Bank Board in that there was not a quorum present to fill vacancies on the Board of Directors, since Richards Matthews, Jr. was not present at this reconvened meeting and since Eugene Webb, Jr. and Marguerite R. Webb could not participate by law, since they were interested parties;

(d) The proxy holders of Beverly Hills Federal, who were originally Eugene Webb, Jr., Marguerite R. Webb, Robert G. Rufi, Eugene Webb, III and Richards Matthews, Jr., violated the law when they respectively transferred their proxies for a consideration;

(e) Bart Lytton, Beth Lytton, Thomas W. Clarke and the Board of Directors of Lytton Financial Corporation are equally at fault for the violation of law and the regulations of this Board in the reconstitution of the Board of Directors of Beverly Hills Federal Savings and Loan Association, the purchasing of directorships and the sale of proxies, with the Webbs and the former Board of Directors of Beverly Hills Fed-

eral Savings and Loan Association, since they participated in and encouraged these respective transactions;

(f) The current Board of Directors of Beverly Hills Federal Savings and Loan Association have not been properly elected for the reasons hereinbefore described.

RESOLVED That pursuant to and under authority of Section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C.A. § 1464(d)(1), notice is hereby given to Beverly Hills Federal Savings and Loan Association, its Directors as of March 13, 1961, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, and its Directors since March 14, 1961, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman and Glenn Wilson, and to Lytton Financial Corporation of the foregoing violations of law and the regulations of the Federal Home Loan Bank Board.

RESOLVED FURTHER That the Beverly Hills Federal Savings and Loan Association, its Directors as of March 13, 1961, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, and its Directors since March 14, 1961, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman and Glenn Wilson, and Lytton Financial Corporation, its Officers and Directors, are hereby given thirty (30) days from the date of receipt of this Resolution within which to correct these violations of the law and the regulations of the Federal Home Loan Bank Board and to perform the legal duties concomitant with the correction of such violations of law and the regulations of this Board.

RESOLVED FURTHER That an authenticated copy of this resolution be personally served forthwith on Beverly Hills Federal Savings and Loan Association, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Eugene C. Jones, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman, Glenn Wilson and Lytton Financial Corporation or in lieu thereof that an authenticated copy be sent forthwith by registered mail to said parties at their last known addresses as they appear on the records of the Board.

I, Harry W. Caulsen do hereby certify that I am Secretary to the Federal Home Loan Bank Board, and do further certify that the foregoing is a true and correct copy of a resolution adopted by the Federal Home Loan Bank Board at a meeting of said Board held at Washington, D.C. on the 26th day of January, 1962.

Witness my hand and the seal of said Board this 26th day of January, 1962.

Harry W. Caulsen  
Secretary

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EXHIBIT "B."

FEDERAL HOME LOAN BANK BOARD

No. 15,703

Date: March 30, 1962

WHEREAS, it now appearing to the Board that, in accordance with its Resolution Number 15,430, dated January 26, 1962, the following named parties were personally served on the dates indicated: Beverly Hills Federal Savings and Loan Association on January 31, 1962, upon H. P. Braman, President of the Association, and Eugene Webb, Jr. on January 31, 1962, Marguerite R. Webb on February 2, 1962, Richards Matthews, Jr. on January 31, 1962, Robert G. Rufi on January 31, 1962, Eugene C. Jones on February 1, 1962, Thomas W. Clarke on January 31, 1962, Beth Lytton on January 31, 1962, Dr. Samuel J. Sills on January 31, 1962, Bart Lytton on January 31, 1962, H. P. Braman on January 31, 1962, Glenn Wilson on January 31, 1962, and Lytton Financial Corporation on January 31, 1962, upon Bart Lytton, President of the Corporation, said service upon said parties being accomplished in accordance with Board Resolution Number 15,450, dated January 29, 1962, and

WHEREAS, all of the above named interested parties were given thirty days from the date of the receipt of Resolution Number 15,430, within which to correct violations of law and the regulations of the Federal Home Loan Bank Board contained therein and to perform the legal duties concomitant with the correction of such violations of law and the regulations of this Board, and

WHEREAS, in response to the Board Resolution Number 15,430, Eugene Webb, Jr., Marguerite R. Webb,



Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones acknowledged the receipt of the Board Resolution and in reply denied that they or any of them had violated any rule or regulation adopted by the Board or any provision of said Association's by-laws or any other applicable law and further that none of them has at any time since March 14, 1961 been a director or officer of the said Association, and therefore, none of them has power or authority to correct any of the asserted violations or to perform any legal duty assertedly concomitant with the correction of such alleged violations, and

WHEREAS, no response was received from Beverly Hills Federal Savings and Loan Association and on February 21, 1962, A. C. Newell, Supervisory Agent, Federal Home Loan Bank Board was served with a complaint for declaratory judgment and injunction and other relief, instituted in behalf of the Beverly Hills Federal Savings and Loan Association, in which said Association, in paragraph six of said complaint, stated that the "ultimate conclusion" of Resolution Number 15,430 "was that the directors of the plaintiff association, . . . had not been properly elected and had been elected in violaton of law and regulation" and concluded the complaint by praying: "1. That the court make and enter a declaratory judgment declaring the present board of directors to be duly elected, qualified and acting directors of BEVERLY HILLS FEDERAL SAVINGS AND LOAN ASSOCIATION, "2. That the FEDERAL HOME LOAN BANK BOARD be enjoined preliminarily from further actions or proceedings against the plaintiff association during the pendency of the within action," and "3. That the court

grant to plaintiff such other and further relief as the court may deem just and proper in accordance with 28 U.S.C. 2202 . . .”, and

WHEREAS, the Respondents, Bart Lytton, Beth Lytton, Thomas W. Clarke, Dr. Samuel J. Sills, H. P. Braman and Glenn Wilson have not personally responded, and

WHEREAS, it appears that Beverly Hills Federal Savings and Loan Association, acting through its purported officers and directors, has attempted to exercise an election provided in Section 5(d)(1) of the Home Owners’ Loan Act of 1933, as amended, 12 U.S.C. §1464(d)(1), which allows the Association affected thirty days after service of said notice to apply, if it wishes, to the United States District Court for the District where the association is located for declaratory judgment, an injunction or other relief in regard to the alleged violations of law or regulations set forth in the resolution served upon said association, and

WHEREAS, it appears that Beverly Hills Federal Savings and Loan Association, acting through its purported officers and directors, has sought relief as to only a portion of the violations of law and regulations alleged in Board Resolution Number 15,430 and it appearing further that in filing its complaint, there was not a full and complete disclosure made to the United States District Court for the Southern District of California, Central Division, of the entire nature of the proceedings instituted, and

WHEREAS, it appears to the Board that none of the interested parties charged in Board Resolution Number 15,430, other than Beverly Hills Federal Savings and Loan Association, has elected to proceed in Federal



Court and they have not been made parties to the proceeding therein by the Association, and it appearing further to the Board that these interested parties have the right to a full and appropriate hearing to afford them the opportunity to protect their respective interests, which would include their valuable property rights to enjoy a relationship of trust and responsibility with the Association in the capacity of officers, directors, employees or agents of, and parties otherwise directly or indirectly connected with the management or control of Beverly Hills Federal Savings and Loan Association, presently or in the future, and

WHEREAS, in order to protect the rights of the above interested parties and to afford a hearing on all issues presented in Board Resolution Number 15,430 in regard to Beverly Hills Federal Savings and Loan Association, the Federal Home Loan Bank Board hereby orders a hearing to be held as set forth in the penultimate paragraph of this Resolution, at which time the Respondents will be required to answer the Charges set forth hereinafter in this Resolution, and

WHEREAS, Section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. §1464(d)(1) provides that in the event the Association concerned does not comply with law or regulation within the thirty day period, then the Board shall give such Association twenty days written notice of the charges against it and of a time and place at which the Board will conduct a hearing as to such violation of duty, and

WHEREAS, the parties named in paragraph 1 of this Resolution (hereinafter referred to as the Respondents) were or are officers, directors, employees or agents of, or otherwise directly or indirectly connected with the

management or control of Beverly Hills Federal Savings and Loan Association, and

WHEREAS, under the provisions of Section 5(a) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. §1464(a), the Board is authorized to provide for the organization, incorporation, examination, operation and regulation of Federal Savings and Loan Associations, and

WHEREAS, under the provisions of Section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. §1464(d)(1), authorizing the Board to enforce any provision of this section or rules and regulations made thereunder or any other law or regulation, the Respondents named herein are charged as follows: CHARGE I. (a) The Respondents, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones have violated their fiduciary duties to the other members of Beverly Hills Federal Savings and Loan Association in that they, individually and collectively, took advantage of their powers as officers and directors of Beverly Hills Federal Savings and Loan Association to effectuate and consummate an opportunity to further their own individual interests and in furtherance thereof exercised and abused their powers as officers and directors for "good and valuable consideration", and failed to disclose the nature of such consideration and to reveal all material and relevant facts to the other members of Beverly Hills Federal Savings and Loan Association.

(b) Lytton Financial Corporation, acting through Thomas W. Clarke, Senior Vice President and Attorney and Bart Lytton, President, Chairman of the Board and a Director, was the offeror of the opportu-

ity afforded to the Respondents listed in Paragraph (a) of this Charge I and with knowledge participated in the consummation of the breaches of trust alleged in Paragraph (a) of this Charge I and further with knowledge accepted the benefits received from these breaches of trust.

CHARGE II. (a) The Respondents, Bart Lytton, Beth Lytton, Thomas W. Clarke and the Board of Directors of Lytton Financial Corporation, acting for and on behalf of said Corporation, unlawfully purchased proxies from Respondents, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., and Robert G. Rufi, and these latter parties unlawfully sold and transferred these proxies for good and valuable consideration.

(b) The Respondent, Bart Lytton, voted the aforementioned 18,146 unlawfully purchased proxies, representing 471,458 votes, which had been obtained under power of substitution from Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Eugene Webb, III, and Robert G. Rufi, at the Meeting of Shareholders of Beverly Hills Federal Savings and Loan Association, held on Wednesday, January 17, 1962 at 8:30 o'clock a.m. at the offices of the Association at 9424 Wilshire Boulevard, Beverly Hills, California.

(c) The Respondents, Eugene Webb, Jr. and Marguerite R. Webb, as interested directors, violated §544.5 of the Regulations of the Federal Home Loan Bank Board and Section 4 of the By-Laws of Beverly Hills Federal Savings and Loan Association by attempting to conduct a meeting of the Board of Directors of Beverly

Hills Federal Savings and Loan Association and transacting business without a quorum on or about the 14th day of March, 1961 at 1:30 p.m. at the offices of the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California.

(d) The Respondents, Robert G. Rufi and Eugene C. Jones, violated §544.5 of the Regulations of the Federal Home Loan Bank Board and Section 4 of the By-Laws of Beverly Hills Federal Savings and Loan Association, when they knowingly participatef in a meeting of the Board of Directors of Beverly Hills Federal Savings and Loan Association, on or about the 14th day of March, 1961 at 1:30 p.m. at the offices of the Title Insurance and Trust Company, 433 South Spring Street, Los Angeles, California and transacted most important business, namely, an election to fill vacancies in the Board of Directors without a quorum and knowingly allowed Eugene Webb, Jr., and Marguerite R. Webb, interested directors, to participate in this meeting.

(e) The Respondent, Richards Matthews, Jr., violated his fiduciary duties of loyalty and good faith to the other members of Beverly Hills Federal Savings and Loan Association when he resigned his directorship as part of an agreement by certain directors to elect and maintain designated persons in office as officers and directors of the Association and when he knowingly absented himself from the reconvened meeting of the Board of Directors, referenced in paragraphs (c) and (d) of this Charge II, and allowed most important business, namely an election to fill vacancies in the Board of Directors, to be transacted without a quorum and

without his taking action consonant with his duties owed to the other members of the Association as a director.

(f) Respondents, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, and Eugene C. Jones, violated their fiduciary responsibilities of loyalty and good faith to the shareholders of Beverly Hills Federal Savings and Loan Association by participating in the furtherance and accomplishment of an agreement by certain directors to elect and maintain designated persons in office as Officers and Directors of Beverly Hills Federal Savings and Loan Association, which was against public policy and accordingly void, and all said participating directors acted with the knowledge of said unlawful agreement.

CHARGE III. The Respondents, Bart Lytton, Beth Lytton, Thomas W. Clarke, and the Board of Directors of Lytton Financial Corporation, are equally at fault for the violation of law and the regulations of this Board in the purported reconstitution of the Board of Directors of Beverly Hills Federal Savings and Loan Association, the purchasing of directorships, and the sale of proxies, with the Webbs and the former Board of Directors of Beverly Hills Federal Savings and Loan Association, since they participated in and encouraged these respective transactions.

CHARGE IV. The Respondents, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton and Lytton Financial Corporation, by their unlawful actions, as charged above and the unlawful actions of Respondents, Beth Lytton, Thomas W. Clarke and Dr. Samuel J. Sills, which were cor-

rected, as set forth in the penultimate and last paragraphs of Page 3 of Board Resolution Number 15,430, have demonstrated a pattern of lack of responsibility and respect for law and the regulations of the Federal Home Loan Bank Board and their duties as officers, directors, employees or agents of, or parties otherwise directly or indirectly connected with the management or control of, a Federal Savings and Loan Association by their failure to disclose fully these unlawful actions to the shareholders of Beverly Hills Federal Savings and Loan Association, which they had a legal duty to so fully disclose to the beneficiaries of their trust.

RESOLVED, that pursuant to and under the authority of the provisions of Section 5(d)(1) of the Home Owners' Loan Act of 1933, as amended (12 U.S.C. §1464-(d)(1)) and Section 509.3 of the Rules and Regulations of the Federal Home Loan Bank Board (12 CFR §509.3), a hearing in accordance with the provisions of Section 5 of the Administrative Procedure Act (5 U.S.C. §1004) will be held at 10 a.m. on the 8th day of May, 1962, at Room 1800, 615 South Flower Street, Los Angeles, California, as to such alleged violations of law or regulation and any legal duty; *provided however*, that the hearing date shall be subject to modification of the Board, upon notice to all interested parties, subject to the disposition of the complaint in *Beverly Hills Federal Savings and Loan Association v. Federal Home Loan Bank Board*, Civil Action No. 62-305-K, in the United States District Court for the Southern District of California, Central Division.



RESOLVED FURTHER, that an authenticated copy of this resolution be personally served forthwith on Beverly Hills Federal Savings and Loan Association, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Eugene C. Jones, Thomas W. Clarke, Beth Lytton, Dr. Samuel J. Sills, Bart Lytton, H. P. Braman, Glenn Wilson and Lytton Financial Corporation or in lieu thereof that an authenticated copy be sent forthwith by registered mail to said parties at their last known addresses as they appear on the records of the Board.

I, Harry W. Caulsen, do hereby certify that I am Secretary to the Federal Home Loan Bank Board, and to further certify that the foregoing is a true and correct copy of a resolution adopted by the Federal Home Loan Bank Board at a meeting of said Board held at Washington, D. C. on the 30th day of March, 1962.

Witness my hand and the seal of said Board this 30th day of March, 1962.

Harry W. Caulsen  
Secretary

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EXHIBIT "C"

STIPULATION FOR SETTLEMENT AND  
ENTRY JUDGMENT OF DISMISSAL.

In the United States District Court for the Southern District of California, Central Division.

Beverly Hills Federal Savings and Loan Association, Plaintiff, vs. Federal Home Loan Bank Board, et al., Defendants. Civil Action No. 62-305 FW

IT IS HEREBY STIPULATED by and between plaintiff Beverly Hills Federal Savings and Loan Association, defendants Lytton Financial Corporation, Bart Lytton, Beth Lytton, Thomas W. Clarke, Samuel J. Sills, H. P. Braman and Glenn Wilson (hereinafter referred to as "Lytton Defendants"), and defendant and cross-complainant Federal Home Loan Bank Board, by and through their respective counsel as follows:

1. The above entitled litigation and the administrative proceedings from which it arose have been pending for over three years and the controversies between these parties involved therein still remain unresolved. There are numerous discovery matters still pending with respect to some of which appeals have been taken. It is apparent that the litigation cannot be disposed of by trial in the reasonably near future.

2. Continuance of this litigation constitutes a substantial burden upon plaintiff, upon the Lytton Defendants, and upon defendant and cross-complainant Federal Home Loan Bank Board.

3. Defendant and cross-complainant, Federal Home Loan Bank Board has broad plenary power over and responsibility for the operations of plaintiff Beverly



Hills Federal Savings and Loan Association and for the operation of the entire Federal thrift system of which plaintiff is a part.

4. The parties hereto have agreed to a disposition of the controversies between them.

5. A disposition of these controversies on the terms which have been agreed upon is in the best interests of the plaintiff and its members, the Lytton Defendants, the defendant and cross-complainant Federal Home Loan Bank Board and of the entire thrift system over which said Board has jurisdiction.

6. The above entitled case shall be disposed of insofar as the Lytton Defendants are concerned by the entry of a judgment of dismissal with prejudice in the form attached, which is hereby approved and made a part of this stipulation subject, however, to the following conditions:

- (a) This stipulation shall be submitted to the Court and this Court shall be requested to enter a judgment of dismissal in accordance therewith.
- (b) A judgment in the form attached is signed and entered by the Court on or before February 15, 1965, unless said date shall be extended for a further period not to exceed thirty days by defendant and cross-complainant Federal Home Loan Bank Board, said extension to be accomplished by written notice to the other parties to this stipulation.

7. Plaintiff, Beverly Hills Federal Savings and Loan Association, agrees that defendant, Lytton Financial Corporation may file a consolidated income tax return for the Southland Company for the period of the year

1965 during which the Southland Company was a wholly owned subsidiary of Lytton Financial Corporation and Lytton Financial Corporation agrees that it will pay the income tax, if any, due for such period Plaintiff, Beverly Hills Federal Savings and Loan Association, further agrees that it will not permit or cause the Southland Company to revoke said consent.

8. The Lytton Defendants who were officers or directors of Plaintiff have tendered to plaintiff their resignations as officers and directors of Plaintiff Beverly Hills Federal Savings and Loan Association, and have obtained the resignation of the other director of Plaintiff, Beverly Hills Federal Savings and Loan Association. Said resignations were delivered to Defendant and Cross-Complainant Federal Home Loan Bank Board and have been accepted. New directors replacing each of said resigning directors have been elected.

9. The Lytton Defendants have surrendered all proxies of the members of Beverly Hills Federal Savings and Loan Association of which they had possession or control to Defendant and Cross-Complainant Federal Home Loan Bank Board, and shall undertake no new or further solicitation of proxies thereof for a period of three (3) years from the date of the surrender of the said proxies. Upon such surrender all rights and powers of said Lytton Defendants other than Defendant Glenn Wilson pursuant to said proxies were hereby terminated and cancelled. The rights and powers under said proxies then vested in Defendant Glenn Wilson, who at the request of the Defendant and Cross-Complainant Federal Home Loan Bank Board exercised his power of subscription under said proxies to substitute therein the designee or designees or designees of De-

fendant and Cross-Complainant Federal Home Loan Bank Board. Said proxies and all powers thereunder, including those of Glenn Wilson, if not sooner terminated shall terminate and the same shall be cancelled on January 30, 1966.

10. The performance of the acts specified in paragraphs 8 and 9 above, having occurred, there shall exist no further obligation, liability or duty on the part of any of said Lytton Defendants either to Plaintiff Beverly Hills Federal Savings and Loan Association, its members, or Defendant and Cross-Complainant Federal Home Loan Bank Board with respect to any of the transactions or matters set forth in said amended and supplemental complaint, or in said answers, counterclaims and cross claims, or their conduct or actions with respect thereto. There shall likewise exist no further obligation, liability or duty on the part of the Plaintiff Beverly Hills Federal Savings and Loan Association, its members, or the Defendant and Cross-Complainant Federal Home Loan Bank Board to the Lytton Defendants with respect to any of the transactions or matters set forth in the said amended and supplemental complaint, or in said answers, counterclaims and corss-claims.

11. In accordance with the provisions of Section 5(c) of the Home Owners' Loan Act of 1933, as amended by Public Law 88-560 of the 88th Congress and with the appropriate approval of Defendant and Cross-Complainant Federal Home Loan Bank Board heretofore given, Plaintiff Beverly Hills Federal Savings and Loan Association has purchased, and Defendant Lytton Financial Corporation has sold, all of the outstanding capital stock of the Southland Company, a

California corporation, which said Southland Company is referred to in the amended and supplemental complaint and in the answers, counterclaims and cross-claims above referred to, upon the following terms and conditions:

- (a) Plaintiff Beverly Hills Federal Savings and Loan Association has paid the sum of \$1,500,000.00 cash to Defendant Lytton Financial Corporation for said stock.
- (b) Defendant Lytton Financial Corporation has transferred said shares of said capital stock of Southland Company to Plaintiff Beverly Hills Federal Savings and Loan Association.
- (c) The Lytton Defendants who were officers or directors of Southland Company have tendered to Southland Company their resignations as officers and directors of Southland Company. Said resignations have been delivered to Plaintiff and accepted.
- (d) Defendant Lytton Financial Corporation has warranted that the assets and liabilities of Southland Company at the time of said transfer are as set forth in the pro forma statement as of November 30, 1964, heretofore delivered by Defendant Lytton Financial Corporation to Defendant and Cross-Complainant, Federal Home Loan Bank Board, Defendant Lytton Financial Corporation shall be entitled to retain all earnings and assets of the said corporation in excess of those shown on said pro forma statement.

12. In the event any of the conditions set forth in paragraph 6 above, are not met for any reason whatever including prevention by Court order, this stipulation shall be of no further force and effect and the parties hereto shall have no obligations hereunder nor under the terms of the judgment of dismissal, and the parties will take all necessary actions to place the parties in the positions which they occupied prior to the acts reflected in this stipulation.

13. The execution of this stipulation and the implementation of the settlement hereby contemplated and described shall not in any respect affect or constitute a waiver or release of any claim or claims of plaintiff or of defendant and cross-complainant, Federal Home Loan Bank Board, against any persons except the Lytton Defendants, and it is expressly understood that plaintiff and defendant and cross-complainant, Federal Home Loan Bank Board, do not waive or relinquish any claim or claims against any other persons, firms or corporations than those expressly named or designated herein and retain all their claims and causes of action against all other parties to this action. Further, such execution and implementation shall not be construed as a compensation with respect to any claim for damages asserted by or in behalf of plaintiff in any of the pleadings in this action. Nor shall the execution of this stipulation and the implementation of the settlement in any respect constitute any admission of any wrongdoing of any kind or character by any of the Lytton Defendants. Nor shall the execution of this stipulation and

the implementation thereof in any respect confer any rights upon plaintiff or upon defendant and cross complainant Federal Home Loan Bank Board which they would not otherwise have against any parties other than the Lytton Defendants.

Dated: January 14, 1965.

GLEN R. MILLER  
THOMAS N. DOWD  
ROBERT B. HANKINS  
PIERSON, BALL & DOWD

By /s/ Robert B. Hankins  
Robert B. Hankins  
Attorneys for Plaintiff  
Beverly Hills Federal Savings  
and Loan Association

RICHARD P. BYRNE  
PHILIP R. COLLINS  
MacCRACKEN, COLLINS & HAWES

By /s/ Philip R. Collins  
Philip R. Collins  
Attorneys for Defendant and  
Cross-Complainant Federal  
Home Loan Bank Board

O'MELVENY & MYERS  
RODNEY K. POTTER  
By /s/ Rodney K. Potter  
Rodney K. Potter  
Attorneys for Lytton Defendants

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## COVENANT NOT TO SUE

For and in consideration of the performance of the acts specified in that certain stipulation dated January 14, 1965 in that certain action entitled Beverly Hills Federal Savings and Loan Association, Plaintiff, vs. Federal Home Loan Bank Board, et al, Defendants, pending in the U. S. District Court, Southern District of California, and being No. 62305 FW in the files of said Court, Beverly Hills Federal Savings and Loan Association and the Federal Home Loan Bank Board, Covenantors, covenant to Lytton Financial Corporation, Bart Lytton, Beth Lytton, Thomas W. Clarke, Samuel J. Sills, H. P. Braman and Glenn Wilson, Covenantees, as follows:

1. Covenantors covenant and agree that they will not at any time hereafter commence, maintain or prosecute any action or proceeding or assert any claim against Covenantees or any of them for relief of any kind on account of any of the following matters occurring during the period Covenantees or any of them shall have occupied any position as an officer, director, employee or attorney of Covenantor Beverly Hills Federal Savings and Loan Association, insofar as any such matters shall appear in or be disclosed by the books and records of Beverly Hills Federal Savings and Loan Association: Contributions made by Beverly Hills Federal Savings and Loan Association to charity or to civic or philanthropic organizations; expenses of officers, directors or attorneys paid by Beverly Hills Federal



Savings and Loan Association; expenses incurred and paid by Beverly Hills Federal Savings and Loan Association for public relations counseling or services; attorneys fees paid by Beverly Hills Federal Savings and Loan Association to any attorney; and compensation or bonus paid to any officer, attorney, director or employee of Beverly Hills Federal Savings and Loan Association. By the acceptance of this covenant Covenantors warrant and represent that the books and records of Beverly Hills Federal Savings and Loan Association truly reflect all of the matters referred to in paragraph 1 hereof.

2. Covenantors further covenant and agree that they will not at any time hereafter commence, maintain or prosecute any action or proceeding or assert any claim against Covenantees or any of them for relief of any kind on account of the participation of Covenantees or any of them in causing or implementing the settlement of said action by judgment pursuant to stipulation between Covenantors and Covenantees.

3. The execution of this Covenant Not To Sue does not represent to Covenantors and shall not be construed as a compensation for any claim which either of them may have on account of any of the matters above referenced in paragraphs 1 and 2 hereof, and it is understood that Covenantors do not in any manner or respect waive or relinquish any claim or claims against any other persons, firms or corporations than those expressly named and designated herein as Covenantees

and that specifically Covenantors retain their claims and causes of action against all other persons with respect to any such matters.

BEVERLY HILLS FEDERAL SAV-  
INGS AND LOAN ASSOCIATION

By /s/ Preston N. Silbaugh

FEDERAL HOME LOAN BANK  
BOARD

By /s/ Joseph P. McMurray

ATTEST:

/s/ Leonard M. Smith

Secretary

ATTEST:

/s/ Harry Caulsen

Secretary

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## APPENDIX "B."

### **Answer to Second Amended and Supplemental Complaint for Declaratory Judgment, to Impress a Trust, and Other Relief.**

United States District Court, Central District of California.

Beverly Hills Federal Savings and Loan Association. Plaintiff, vs. Federal Home Loan Bank Board, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi, Eugene C. Jones, and Title Insurance and Trust Company, Defendants. Civil Action No. 62-305-FW.

Filed Nov. 23, 1966.

### ANSWER OF DEFENDANT, FEDERAL HOME LOAN BANK BOARD

Defendant, Federal Home Loan Bank Board, by its attorneys, in answer to the Second Aended and Supplemental Complaint for Declaratory Judgment, to Impress a Trust, and Other Relief (hereinafter referred to as "complaint") states as follows:

1. Defendant, Federal Home Loan Bank Board, admits the allegations contained in paragraph 1 of the complaint and alleges further that the preceding complaints filed heretofore in this controversy also arose and were filed under the provisions of the alleged statutory provisions.

2. Defendant, Federal Home Bank Board, admits the allegations contained in paragraph 2 of the complaint but contends that such allegation is irrelevant, since jurisdiction of the complaint is conferred by fed-

eral statute, 12 U.S.C. § 1464(D)(1) and is not dependent upon any requisite amount in controversy.

3. Defendant, Federal Home Loan Bank Board, admits the allegation as to the location of the home office of the plaintiff, Beverly Hills Federal Savings and Loan Association (hereinafter referred to as "Association"), but denies the remainder of the allegations contained in paragraph 3 of the complaint on the basis that such allegations are incomplete. Defendant, Federal Home Loan Bank Board alleges that plaintiff, Association, is a federal savings and loan association, whose original Federal Charter was issued under the Home Owners Loan Act of 1933, as amended (hereinafter referred to as "the Act") on November 6, 1936 as Southland Federal Savings & Loan Association and the name of such association was changed to Beverly Hills Federal Savings & Loan Association by Federal Home Loan Bank Board Resolution No, 10,651, dated April 15, 1957, said Association currently existing under a "Charter K (Rev.)" Number 1302, issued by the Federal Home Loan Bank Board on or about April 15, 1957.

4. Defendant, Federal Home Loan Bank Board, admits the allegations contained in paragraph 4 of the complaint.

5. Defendant, Federal Home Loan Bank Board, admits the allegations contained in paragraph 5 of the complaint.

6. Defendant, Federal Home Loan Bank Board, admits the allegations contained in paragraph 6 of the complaint.

7. Defendant, Federal Home Loan Bank Board, admits the allegations contained in the first and third



sentences of paragraph 7 of the complaint. Defendant, Federal Home Loan Bank Board, admits the allegations contained in the second sentence of paragraph 7 of the complaint to the effect that Eugene Webb, Jr. was president of the plaintiff, Association, but said defendant further alleges that the defendant Eugene Webb, Jr. for a long time prior to and on March 14, 1961, was also the Chief Executive Officer of the plaintiff, Association.

8. Defendant, Federal Home Loan Bank Board, admits the allegations contained in the second, third and fourth sentences of paragraph 8 of the complaint, but denies that portion of the first allegation contained in the first sentence of paragraph 8 of the complaint and alleges that since 1957 and specifically on March 14, 1961 the Southland Company was a corporation organized under the laws of California and engaged in the mortgage, insurance, escrow and related business, and furthermore its predecessor was a California corporation engaged in the same business and known as the Southland Mortgage Company.

9. Defendant, Federal Home Loan Bank Board, admits the allegations in the first sentence of paragraph 9 of the complaint as to the ownership of the outstanding stock of the Southland Company, but denies that portion of the allegations contained in the first sentence of paragraph 9 of the complaint as to "a long time prior to and on March 14, 1961" and alleges that since 1957, and specifically on March 14, 1961 the Southland Company was a corporation organized under the laws of the State of California and engaged in the mortgage, insurance, escrow and related business and furthermore, its predecessor was a California corpora-

tion engaged in the same business and known as the Southland Mortgage Company. Defendant, Federal Home Loan Bank Board admits the allegations contained in the second and third sentences of paragraph 9 of the complaint.

10. The Defendant, Federal Home Loan Bank Board, admits the allegations contained in the first, second, third and fourth sentences of paragraph 10 of the complaint but more affirmatively avers and describes the said transactions alluded to in these allegations as follows: On or about March 9, 1961, defendant, Eugene Webb, Jr., together with his spouse, defendant, Marguerite R. Webb, as Trustees for Eugene Webb, III and Beverly Diana Marguerite Webb, their children, entered into a "Buy and Sell Agreement" for the sale of all of the outstanding and issued shares of stock of the Southland Company to Lytton Financial Corporation, acting by and through Thomas W. Clarke, for the sum of \$1,500,000.00 whereby it was also provided that the said defendants, Eugene Webb, Jr. and Marguerite R. Webb would do "any and all things necessary, and execute any and all necessary documents or agreements, as may be required by the buyer, in order to assure the continuance of the present business relationship between the Southland Company and the Beverly Hills Federal Savings and Loan Association." On or about March 14, 1961, Eugene Webb, Jr. and Marguerite R. Webb entered into a Personal Service Agreement with Lytton Financial Corporation, acting by and through Bart Lytton, the said agreement providing that the Webbs would be paid the sum of three hundred thousand dollars (\$300,000.00) over a five year period, payable sixty thousand dollars

(\$60,000.00) per year, annually in advance, the first payment of sixty thousand dollars (\$60,000.00) being payable upon the execution of the Agreement, irrespective of whether either or both of said parties survived the period of the agreement and were, in fact, able to perform the consultant services provided in said Agreement, said sums representing in fact the further consideration for the transfer, sale and control of the Association. Defendant, Federal Home Loan Bank Board, denies the first and third allegations contained in the fifth sentence of paragraph 10 of the complaint and affirmatively avers that on the afternoon of March 14, 1961, at or about 1:30 p.m., Pacific Standard Time, Eugene Webb, Jr., as an interested director, violated § 544.5 of the Regulations of the Federal Home Loan Bank Board and Section 4 of the By-Laws of the plaintiff, Association, by attempting to conduct a meeting of the Board of Directors of the Association and attempting to transact most important business, namely, an election to fill vacancies in the Board of Directors without a quorum. Defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones violated their fiduciary responsibilities of loyalty and good faith to the shareholders of the plaintiff, Association, by participating in the furtherance and accomplishment of an agreement to elect and maintain certain designated persons in office as Officers and Directors of the plaintiff, Association. Defendant, Federal Home Loan Bank Board, denies the second allegation contained in the fifth sentence of paragraph 10 of the complaint and alleges affirmatively that on or about March 14, 1961, as part of the consideration to Lytton Financial Corporation for the purchase of the Southland

Company, the power of substitution, contained in all proxies of members of the plaintiff, Association, constituting and appointing Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr. Eugene Webb, III and Robert G. Rufi, in the order named proxy for and in the name, place and stead of the signing member, was "for good and valuable consideration", exercised by substituting Bart Lytton, Beth Lytton, Dr. Samuel J. Sills and Thomas W. Clarke for the individuals previously named, in the order named. Defendant, Federal Home Loan Bank Board, admits the allegations contained in the sixth sentence of paragraph 10 of the complaint and further affirmatively alleges that Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones participated and acted with knowledge of the unlawfulness of the agreement to elect and maintain certain designated persons in office as Officers and Directors of the plaintiff, Association, and the defendant, Eugene Webb, Jr., acting as a director and President of plaintiff, Association, and Marguerite R. Webb, acting as a director, First Vice President and Chairman of the Board of Directors of plaintiff, Association, took the advantage and opportunity to transfer the plaintiff, Association, by coupling it with the transfer and sale of the Southland Company, of which Eugene Webb, Jr., was a director, General Manager, and President and Marguerite R. Webb was a director, Vice President and Assistant Secretary.

11. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 11 of the complaint but more affirmatively avers that the control of the plaintiff, Association, including the

proxies of members therein and the directorships thereof, and the value of said control, proxies and directorships are assets of the plaintiff, Association and its members and the sale thereof was wrongful and unlawful and was in willful, deliberate and extreme disregard for and in violation of the fiduciary duties owed by defendants, Eugene Webb, Jr. and Marguerite R. Webb.

12. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 12 of the complaint but more affirmatively avers that the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones have as a result of all actions alleged as violations by these said defendants in Federal Home Loan Bank Board Resolutions No. 15, 431 and No. 15,703, violated Federal Law, the Regulations of the Federal Home Loan Bank Board and "other law", which included violation of state law and federal common law.

13. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 13 of the complaint but asserts no claim for damages, either compensatory or punitive, against any of the defendants save the defendants, Eugene Webb, Jr., and Marguerite R. Webb.

14. The Defendant, Federal Home Loan Bank Board denies the allegations contained in paragraph 14 of the complaint except insofar as it alleges that the plaintiff, Association was under the control and domination of Bart Lytton and more affirmatively avers that Bart Lytton, acting through Beth Lytton, Samuel J. Sills, Thomas W. Clarke, H. B. Braman and Glenn

Wilson at various times from the 15th day of March, 1961 until the 14th day of January, 1965, was in sole control of the plaintiff, Association.

15. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 15 of the complaint.

16. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 16 of the complaint.

17. The Defendant, Federal Home Loan Bank Board denies the allegations contained in paragraph 17 of the complaint and more affirmatively avers that the plaintiff, Association on February 20, 1962 acting under the control of Bart Lytton, through his control of the then directors of the plaintiff, Association, filed this action in declaratory relief to have the court declare that the sale transaction was valid and to enjoin the defendant, Federal Home Loan Bank Board from proceeding with its resolutions and written charges or from correcting the violations.

18. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 18 of the complaint and more affirmatively alleges that the Judgment of Dismissal (Exhibit A hereof) specifically preserves the causes of action asserted herein against the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones.

19. The Defendant, Federal Home Loan Bank Board admits the allegations contained in the first conjunctive clause of the first sentence of paragraph 19 of the complaint, but denies the allegations contained



in the second conjunctive clause of the first sentence of paragraph 19 of the complaint to the effect that the defendant, Title Insurance and Trust Company was a true co-trustee of the trust referred to in the complaint, affirmatively averring that the said defendant, Title Insurance and Trust Company could be more properly termed as a mere corporate trustee with no voting rights to control said trust. The Defendant, Federal Home Loan Bank Board admits the allegations contained in the second sentence of paragraph 19 of the complaint and affirmatively avers that the said defendant, Title Insurance and Trust Company specifically did not join in the warranties contained in Buy and Sell Agreement between the defendants, Eugene Webb, Jr. and Marguerite R. Webb and the Lytton Financial Corporation, nor did the said defendant, Title and Insurance and Trust Company execute the aforementioned Buy and Sell Agreement. The Defendant, Federal Home Loan Bank Board denies that part of the allegations contained in the third sentence of paragraph 19 of the complaint that the Title Insurance and Trust Company is a necessary party to this cause of action for the purpose of facilitating the enforcement of any orders made by the court with respect to the trust or the trust property.

20 The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 20 of the complaint but affirmatively avers that the plaintiff, Association is not seeking as complete and full relief as the Defendant, Federal Home Loan Bank Board asserts in currently pending cross-claims against the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones, which were asserted at the very outset of this litigation.



21. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 21 of the complaint.

22. The Defendant, Federal Home Loan Bank Board admits the allegations contained in paragraph 22 of the complaint but more affirmatively avers that there are other extant controversies which are evident from a comparison of the Second Amended and Supplemental Complaint of the plaintiff, Association with the currently outstanding Cross-Claims of the Defendant, Federal Home Loan Bank Board as to the Defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr. Robert G. Rufi and Eugene C. Jones, as well as this pleading of the Defendant, Federal Home Loan Bank Board, a regulatory agency charged with the supervision of federally-chartered Savings and Loan Associations, which is asserting broader and more extensive claims than the plaintiff, Association whose claims from an examination of the Second Amended and Supplemental Complaint are of a more narrow scope by virtue of its status as a thrift institution rather than a regulatory agency, with the exception that the Defendant, Federal Home Loan Bank Board has not asserted claims for punitive or compensatory damage against the defendants, Richards Matthews, Jr., Robert G. Rufi or Eugene C. Jones.

WHEREFORE, it is prayed:

1. That injunctive and coercive relief be directed against the plaintiff, Association through its present managing parties to correct such violations of law and Federal Regulations in the manner hereinafter set forth in his prayer and include a full disclosure to the mem-

bers of the said plaintiff, Association of all breaches of trust and responsibility found to have been committed by the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones.

2. That the defendants, Eugene Webb, Jr., Marguerite R. Webb, Robert G. Rufi, Richards Matthews, Jr. and Eugene C. Jones be barred from serving in a capacity of trust and responsibility directly or indirectly as an officer, director or party directly or indirectly connected with the management or control of Beverly Hills Federal Savings & Loan Association for five years from the final order of this court directing such relief.

3. That the plaintiff, Association shall be enjoined from reimbursing for legal expenses and fees, the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones who are found to have been guilty of wrongdoing in connection with any legal proceeding for which reimbursement is sought.

4. That the Court enter judgment for punitive damages against the defendants, Eugene Webb, Jr. and Marguerite R. Webb, for their respective and collective willful and deliberate disregard of their fiduciary duties to the Association and willful disregard for the requirements of law and federal regulation designed to protect the plaintiff, Association and its members, in its discretion, in an amount per individual deemed just and proper, which shall be ordered to be used by the plaintiff, Association to help defray the costs incurred by the said plaintiff, Association in the present litigation resulting from unlawful actions of these parties.

5. That defendants, Eugene Webb, Jr. and Marguerite R. Webb hold in constructive trust for the use and benefit of the plaintiff, Association the sum of one million eight hundred thousand dollars, received by or on behalf of said defendants, Eugene Webb, Jr. and Marguerite R. Webb as a consideration for the transfer of control of the plaintiff, Association, including the transfer of voting proxies and directorships in said Association.

6. That general damages be awarded against the defendants, Eugene Webb, Jr. and Marguerite R. Webb in favor of the plaintiff, Association in the sum of one million eight hundred thousand dollars (\$1,800,000.00).

7. That the defendant, Federal Home Loan Bank Board shall have judgment against the plaintiff, Association and the defendants, Eugene Webb, Jr., Marguerite R. Webb, Richards Matthews, Jr., Robert G. Rufi and Eugene C. Jones for its costs.

8. That the court grant to the defendant, Federal Home Loan Bank Board such other and further relief as to the Court may seem just and proper.

Dated: November 22, 1966.

MacCRACKEN, COLLINS & HAWES  
Special Counsel for Defendant,  
Federal Home Loan Bank Board.  
By: Philip R. Collins  
PHILIP R. COLLINS

/s/ Richard P. Byrne  
RICHARD P. BYRNE  
Of Counsel

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## APPENDIX "C."

### Memorandum Decision and Opinion.

United States District Court, Central District of California.

Beverly Hills Federal Savings and Loan Association, Plaintiff, v. Federal Home Loan Bank Board, et al., Defendants. No. 62-305-FW.

Filed: April 6, 1967.

Defendants EUGENE WEBB, JR., MARGUERITE R. WEBB, RICHARDS MATTHEWS, JR., ROBERT G. RUF1 and EUGENE C. JONES moved to dismiss plaintiff's action upon its second amended and supplemental complaint on the grounds that the Court does not have jurisdiction of the subject matter of plaintiff's action against said moving defendants. Other defendants in the action who did not join in said motion are FEDERAL HOME LOAN BANK BOARD (hereinafter referred to as BOARD) and TITLE INSURANCE AND TRUST COMPANY. The moving defendants are hereinafter referred to as the WEBB GROUP. The Court originally denied the motion of the WEBB GROUP to dismiss plaintiff's action against them, (said motion as originally made by the moving defendants was made on many grounds); the Court thereafter announced to the parties that it would reconsider the motion of the WEBB GROUP to dismiss plaintiff's action against them on the ground that the Court did not have jurisdiction of the subject matter of plaintiff's said action against the WEBB GROUP; but the Court directed that there be a factual hearing or trial on the one issue as to whether or not the Court does have jurisdiction of said subject matter.

The matter thereupon came on for trial and hearing as to the specific issue of jurisdiction of the subject matter of plaintiff's action against the WEBB GROUP. Evidence, both oral and documentary, was received and the matter was thereafter submitted to the Court for decision upon the filing of memoranda of points and authorities by the parties.

There is no claim of diversity jurisdiction of the action.

While it has been argued by plaintiff that the Court has jurisdiction of plaintiff's action against the WEBB GROUP because such cause of action arises under a law of the United States,—in short, that the Federal Court has jurisdiction over an action by a Federal savings and loan association against its former directors for breach of fiduciary duty on the part of such former directors, the Court rejects such contentions. Here there is no controversy concerning the validity or construction of any Federal statute; and the claim of plaintiff against the WEBB GROUP arises from the common law, i.e. State law. See *Miami Beach Federal Savings & Loan Association v. Callander*, C.A. 5, 1960, 283 F.2d 469, 470. (The nature of the case just cited is set forth in an earlier decision in the same case cited at 256 F.2d 410.) See *Gully v. First National Bank*, 299 U.S. 109, 115.

Here there is no pendant jurisdiction of plaintiff's action against the WEBB GROUP of defendants either upon a second amended and supplemental complaint of plaintiff or upon the earlier first amended complaint of plaintiff. The requirements of pendant jurisdiction set forth in *Hurn v. Oursler*, 298 U.S. 238, are not met in this action. Plaintiff's claim against



the WEBB GROUP of defendants does not, as the Court has held, rest upon any Federal ground and is wholly independent of the claim of plaintiff against the FEDERAL HOME LOAN BANK BOARD, even assuming there is a controversy between plaintiff and the BOARD. See *Hurn v. Oursler*, *supra*, at p. 248.

If the Court ever had jurisdiction of subject matter as to the WEBB GROUP it was ancillary jurisdiction in connection with plaintiff's action against the BOARD on plaintiff's first amended complaint where the WEBB GROUP might be joined for complete relief. However, such ancillary jurisdiction, if any ever existed, has been lost because there is no longer any Federal question, or at least no substantial Federal question existing on plaintiff's second amended and supplemental complaint.

Plaintiff cannot now rely upon the first amended complaint to sustain its claim of Federal jurisdiction. *Bullen v. De Bretteville*, 239 F.2d 824, (C.A. 9, 1956).

The evidence here establishes that there is not any real controversy between plaintiff and the FEDERAL HOME LOAN BANK BOARD to give this Court Federal jurisdiction of plaintiff's action. While the plaintiff and the BOARD refer to some controversy, it is clear that such controversy, is fanciful at the best. Thus the BOARD says it contends that plaintiff has not, in effect, guaranteed that it will never employ members of the WEBB GROUP; on the other hand plaintiff says it has no present intention or foreseeable intention of employing the WEBB GROUP or any member thereof; the WEBB GROUP says they have no intention of seeking employment by the plain-

tiff. Certainly this cannot be said to be a controversy within the meaning of Federal jurisdiction.

Too, there is said to be a difference between the BOARD and plaintiff as to whether plaintiff should seek punitive damages in this action against the WEBB GROUP; plaintiff says that based upon the law it is not entitled to such punitive damages; nevertheless the BOARD says plaintiff should seek such punitive damages. Certainly this is not a controversy which justifies Federal jurisdiction.

Nor can plaintiff look to the cross-claims of the BOARD against the WEBB GROUP to give Federal jurisdiction to plaintiff's cause of action against the WEBB GROUP. See *Gully v. First National Bank, supra*, at p. 113.

The Court finds that there is no controversy between plaintiff and FEDERAL HOME LOAN BANK BOARD sufficient to give the Court jurisdiction of the subject matter of plaintiff's action against the WEBB GROUP of defendants and the Court holds that there is no Federal jurisdiction over the subject matter of plaintiff's action against the WEBB GROUP of defendants.

The foregoing constitutes the Findings of Fact and Conclusions of Law on the question of jurisdiction of subject matter.

The Court will sign and file a judgment of dismissal of plaintiff's action against the WEBB GROUP and will direct the entry of a final judgment dismissing the action against said defendants without prejudice.

DATED: April 4, 1967.

/s/ Francis C. Whelan

United States District Judge